IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.231 OF 2006

Laxmilal C. Kanther .. Petitioner

versus

Mohata Co-op.Housing Society

Ltd. through Kishor Firodia & ors..Respondents

...

Mr.D.P. Adsule for the petitioner.

CORAM : D.G. KARNIK, J

DATED : 24th August 2006.

P.C.:

1. Heard learned counsel for the petitioner.

2. By this Contempt Petition, the petitioner prays that the action for contempt of court be taken against the respondents for intentionally disobeying the order dated 5th June 2006 passed by the Divisional Joint Registrar of Co-operative Societies.

3. On account of the non payment of the dues of

the Society, flat of the petitioner was attached by an order of attachment dated 24th March 2006. Thereafter, petitioner filed revision application before Divisional Joint Registrar challenging the order of attachment dated 24th March 2006. On 5th June 2006, in the said revision application the petitioner applied for an interim stay of the impugned order of the attachment dated 24th March 2006. By an order dated 5th June 2006, the Divisional Joint Registrar granted the interim stay. It appears that respondent no.3, the Special Recovery Officer, issued a letter addressed to the petitioner stating that despite a formal attachment of the property effected earlier, the petitioner had not made payment and therefore, he would come to take physical possession of the property on 27th June 2006. I am informed at the bar that the Special Recovery Officer has not taken actual possession on 27th June 2006. Learned counsel for the petitioner states that though actual possessin was not taken the very action of the respondent in writing a letter dated 13th June 2006 that he would come for taking physical possession on 27th June 2006 amounts to breach of the order of stay granted by the Divisional Joint Registrar and therefore, amounts to a contempt.

4. From the record it appears that though a

notice of the hearing of the application for stay was issued, the respondent no.3 was not present when the order for stay was granted. The order for stay was not communicated to the respondent no.3. Respondent no.3 was therefore not aware of the order of stay granted by the Divisional Joint Registrar. Therefore, respondent no.3 cannot be said to have committed wilful breach of the order dated 5th June 2006. It is worthwhile to note that on 27th June 2006, the respondent no.3 did not actually go to the premises to take the possession. Perhaps after writing in the letter dated 13th June 2006, the order might have been communicated to him and therefore he obeyed the order and he did not take possession on 27th June 2006. Learned counsel for the petitioner did not urge and did not point out to me any act allegedly committed by the respondent nos.1 and 2 amounting to breach of the order of stay dated 5th June 2006. Hence no case is made out for taking action against respondent nos.1 and 2 also.

5. Contempt Petition is accordingly dismissed summarily.

(D.G. KARNIK, J)